

Amendments to the Drawings:

The enclosed sheets of drawings include changes to Figs. 4, 5, and 5A. These two sheets replace the original two sheets for Figs. 4, 5, and 5A.

The amendments to Figs. 4, 5 and 5A are made to specifically point out the proximal end 30 of support bar 26 as identified on page 6 of the original filed application.

Enclosures: (2 replacement drawing sheets)

Remarks/Arguments:

In response to the Office Action, the applicant offers the following remarks. Claims 1 through 18 are pending. Independent claim 1 has been substantively amended to address the prior art cited in the Office Action.

The Office Action rejected independent claims 1 through 5, 7, 8, 11, 12, 13, and 17 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,179,735, issued to *Thomanek*, in combination with U.S. Patent Application Publication No. US 2004/0070823 A1, issued to *Radna*. Dependent claims 6, 9, 10, 14, 15, 16, and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the *Thomanek* patent and *Radna* patent application in combination with one or more additional secondary references.

A. Claim 1 Recites Patentable Subject Matter

As amended, claim 1 recites:

An apparatus for head mounting gear for hands free operation, comprising:
a head mounting means comprising a non-rigid encircling band adapted to encircle a head of a wearer and a non-rigid top band adapted to go over the top of the head of the wearer and connected to said non-rigid encircling band;
a mounting bracket mounted to said non-rigid encircling band, said mounting bracket having a pivot means;
a support bar having a proximal and distal end, said support bar being pivotally mounted at its proximal end to said pivot means of said mounting bracket;
said support bar being lockable by a detent mechanism in a position for use and a position for storage;
a quick release mounting mechanism mounted on the distal end of said support bar;
gear mounted to said quick release mounting mechanism being selected to be binoculars or a range finder; and
wherein said gear may be used without being held by hand.

(Emphasis added).

The support for this limitation to independent claim 1 is found at page 6, first paragraph, explaining that "the encircling band 14 and headband 16 are provided with length adjustment means, which may be any suitable means," and further explaining that the two bands are formed of a strap type material. One example of the non-rigid construction of the encircling band and top headband described in the application is for the straps or bands to be made of neoprene. (See Filed Application, at 6, and pending claim 2).

By contrast to the pending disclosure and claims, *Thomanek* teaches a "head piece 47 [] formed of a laminated structure." *Thomanek*, col. 8, lines 59 through 63. The head piece 47 is, as noted in the Office Action, made of several distinct elements, including a "U-shaped band portion 120," a "back pad 126," a "top webbing or strap 130," and "side webbing" or a "pair of side straps 131." As specifically disclosed by *Thomanek*, the head piece, including the U-shaped band portion 120, is made from a "carbon textile," col. 10, lines 3 through 5, using an epoxy and hardener. *Thomanek* describes the head piece as being "stiff" or rigid. *Thomanek*, col. 10, lines 23 through 24. The need for a hard or rigid carbon textile head piece for the *Thomanek* invention is to "provide an outer hard two ply carbon textile layer . . ." which creates a "very durable head piece which will withstand high stress and heavy blows. Should an impact received by the head piece be sufficient to crack the carbon textile layers, the tough middle layer is capable of preventing a complete fracture of the head piece." *Thomanek*, col. 10, lines 40 through 47. By specific design, the *Thomanek* head piece is substantially a rigid material covering the front part of the wearer's head.

There is no suggestion or motivation in *Thomanek* for the head piece to be flexible or non-rigid. Indeed, *Thomanek* teaches away from a head piece that is non-rigid, or flexible. If the *Thomanek* head piece were non-rigid, or non-durable, then a critical objective of the *Thomanek* device would not be met.

Similarly, the *Radna* patent application discloses the use of "any type of known headgear." *Radna*, page 3, paragraph [0039]. The description of the *Radna* headgear necessary to hold the video-recording mechanism for surgery, is that the headgear includes "a front band 2 and a headband 3, mounted on the head of the user. The frontal band 2 and/or the headband 3 may be made of a flexible hard plastic material that is easy to clean and disinfect." (*Radna*, page 3, paragraph [0039]) (emphasis added). As in the *Thomanek* patent, there is no suggestion or motivation provided in the *Radna* patent application to use a non-rigid or flexible single band to encircle the wearer's head with a

second single band to go over the top of the wearer's head. Both the *Thomanek* patent and *Radna* patent application disclose the use of hard or rigid head pieces that are comprised of multiple interconnecting pieces and elements, most of which are constructed of rigid carbon textile or a rigid thermoplastic material. The pending application discloses a much more simplified headgear comprising two pieces, both made of a non-rigid and flexible strapping material.

Accordingly, the advantages of the subject matter of claims 1 through 18 are not attained or suggested by the *Thomanek* patent or the *Radna* patent application, either individually or in combination. This is because claims 1 through 18 contain features as described above that are not taught or suggested by the applied references. As explained by Judge Rich in *In re Civitello*, 144 USPQ 10, 12 (CCPA 1964), when a claimed feature is not disclosed by the reference, the reference cannot render the claim obvious:

Since Haslacher fails to disclose the feature of the claim relied on, we do not agree with the patent office that it would suggest modifying the Craig bag to contain the feature. The Patent Office finds the suggestion, only after making a modification which is not suggested, as we see it, by anything other than appellant's own disclosure. This is hindsight reconstruction. It does not establish obviousness. (Emphasis in original.)

Thus, the applicant does not agree with the Examiner that the *Thomanek* patent, either individually or in combination with the *Radna* patent application, support a *prima facie* case of obviousness.

B. Dependent Claims

Because claims 2 through 18 depend directly from claim 1, or claims that are dependent upon claim 1, which Applicant contends is a patentable claim, then dependent claims 2 through 18 claims are also patentable. See, e.g., *In re McCarn*, 101 USPQ 411, 413 (CCPA 1954) ("sound law" requires allowance of dependent claims when their antecedent claims are allowed). Moreover, claims 2 through 18 are each non-obvious in view of the applied references.

C. Specification

The Office Action objected to the specification as not including a brief description of Figure 9. As provided above, Applicant amends the specification at page 5 to include the following brief description of Figure 9.

"Figure 9 is a view in perspective of an apparatus in accordance with the present invention illustrating an installation with a range finder with a wireless remote control."

Accordingly, Applicant respectfully requests withdrawal of the Office Action objection to the specification.

D. Drawings

The Office Action objected to the drawings as failing to include the reference numeral "30," which is noted on page 6, providing "[a] support bar 26 has a proximal end 30 and a distal end 32. These may be best viewed in Figure 4." As requested by the Office Action, Applicant submits amended replacement Fig. 4, Fig. 5, and Fig. 5A, on two drawing sheets, including the appropriate notation for reference numeral 30 showing the proximal end of support bar 26. As such, Applicant respectfully requests withdrawal of the Office Action objection to the drawings.

E. Oath and Declaration

The Office Action stated that the filed oath or declaration was "defective" for failing to identify the mailing address of each inventor. Applicant respectfully notes that the filed "Declaration And Power Of Attorney" properly does include the names and addresses (including necessary Zip Codes) for both named inventors. More particularly, the filed Declaration provides:

Thomas M. Iannarelli
610 Rose Hill Road
Broomall, PA 19008

And

Timothy L. Gardner
243 Poplar Street
Fleetwood, PA 19522.

Applicant believes the filed Declaration is not defective and respectfully requests withdrawal of the noted objection.

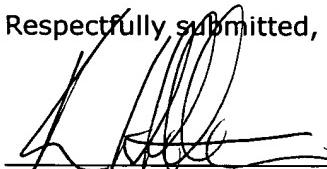
F. Conclusion

By this Amendment, pending claims 1 through 18 have been amended directly (or indirectly through an amendment to independent claim 1) to place the application in better condition for examination and allowance.

Applicant respectfully requests that the rejections under 35 U.S.C. § 103(a) be withdrawn. Favorable action is earnestly solicited. Finally, the Examiner is invited to call

the applicant's undersigned representative if any further action will expedite the prosecution of the application or if the Examiner has any suggestions or questions concerning the application or the present Response. In fact, if the claims of the application are not believed to be in full condition for allowance, for any reason, the applicant respectfully requests the constructive assistance and suggestions of the Examiner in drafting one or more acceptable claims pursuant to MPEP § 707.07(j) or in making constructive suggestions pursuant to MPEP § 706.03 so that the application can be placed in allowable condition as soon as possible and without the need for further proceedings.

Respectfully submitted,



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KWG:kak

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Enclosures: Drawings (2 replacement sheets)

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Michael A. Marshall

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